

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Gary Roy

v.

Civil No. 11-cv-533-SM

Warden, New Hampshire State Prison

REPORT AND RECOMMENDATION

Gary Roy filed a petition for a writ of habeas corpus (doc. no. 1), pursuant to 28 U.S.C. § 2254, challenging his state court second degree murder conviction. On February 24, 2012, the court issued an order (doc. no. 5) granting Roy's motion to stay his habeas petition to enable him to return to the state courts to exhaust his federal claims. In that order, the court directed Roy to file reports every ninety days during the stay in this matter advising the court of the status of the state court proceedings.

Roy last filed a status report on February 14, 2013 (doc. no. 13). On May 22, 2013, the court issued an order (doc. no. 14) noting that Roy had not filed a timely status report ninety days after his last, and providing Roy thirty days in which to do so. To date, Roy has failed to do so. Accordingly, Roy has failed to demonstrate that he has exhausted each of the federal claims in this action, and the matter should be dismissed without prejudice. See 28 U.S.C. § 2254(b)(1) (requiring that a

habeas petition demonstrate exhaustion of available state court remedies).

Conclusion

For the foregoing reasons, the court recommends that the petition for a writ of habeas corpus (doc. no. 1) be dismissed without prejudice. Any objections to this report and recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's order. See United States v. De Jesús-Viera, 655 F.3d 52, 57 (1st Cir. 2011), cert. denied, 132 S. Ct. 1045 (2012); Sch. Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010) (only issues fairly raised by objections to magistrate judge's report are subject to review by district court; issues not preserved by such objection are precluded on appeal).



Landya B. McCafferty
United States Magistrate Judge

July 2, 2013

cc: Gary Roy, pro se

LBM:jba